IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

RSA.No. 567 of 2007()

AS.199/2001 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.207/1998 of MUNSIFF COURT, MAVELIKKARA

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: APPELLANT/APPELLANTS IN AS/DEFNDS.1-4 & 6-7 IN OS

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1. RAHELAMMA GEORGE, W/O. LATE SRI. GEORGE VARGHESE, ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

2. GEE VARGHESE GEORGE, S/O.LATE SRI.GEORGE VARGHESE, ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

3. JOHN VARGHESE, S/O. LATE SRI. GEORGE VARGHESE, ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

4. NINAN GEORGE, S/O. LATE SRI. GEORGE VARGHESE, ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

5. ROSAMMA GEORGE, D/O. LATE SRI. GEORGE VARGHESE, ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

6. SARAMMA OOMEN, D/O. LATE SRI. GEORGE VARGHESE, ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

BY ADV. SRI.M.R.SUDHEENDRAN
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SMT.VINEETHA B.

RESPONDENTS: RESPONDENTS IN AS/PLAINTIFF & DEFENDANT NO.5 IN OS

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1. LEELAMMA THOMAS, W/O. THOMAS GEORGE,
   ALUMMOOTTIL PUTHEN VEEDU, VATHIKULAM MURI,
   THEKKEKARA, ALAPPUZHA DISTRICT.

2. THOMAS GEORGE, S/O. LATE SRI. GEORGE
   VARGHESE, ALUMMOOTTIL PUTHEN VEEDU,
   VATHIKULAM MURI, THEKKEKARA, ALAPPUZHA DISTRICT.

BY ADV. SRI.RINNY STEPHEN CHAMAPARAMPIL FOR R1

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.1175/2007 IN R.S.A.NO.567/2007

7.11.2007 DISMISSED Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 567 OF 2007

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Dated this the 7th day of November, 2007

JUDGMENT

Defendants in O.S.207/1998 before Munsiff Court, Mavelikkara are the appellants. First respondent is the plaintiff and second respondent her husband was the fifth defendant. First appellant is the mother of second respondent and appellants 2 to 6. The marriage of first respondents with second respondent was admittedly solemnised on 16.12.1985. First respondent instituted the suit seeking a decree for realisation of Rs.50,000/- allegedly paid by her father as sthreedhanam to the father of second respondent. The case of first respondent was that during the marriage proposal, it was agreed between the parties that the share of Rs.50,000/- due to first respondent will be paid in cash and 21 ½ cents of property would be conveyed to respondents and as agreed Rs.50,000/- was paid by Geevarghese

Chacko father of first respondent, at the time of betrothel ceremony at the residence of respondents, to George Varghese the father-in-law and he received the amount and as a trustee he is bound to return it to the first respondent on demand. It was contended that after the marriage the father and brothers of second respondent insisted first respondent to dispose of 21 ½ cents and to handover the consideration to the father-in-law which she did not agree and therefore in April, 1989 respondents were pushed out of the house and they were residing with the other appellants for some time and thereafter they shifted their residence to a small shop room building situated near the property and she was told that her share would be paid to her on demand but it was not done by the father-in-law. Second respondent has physical inability and mental ill-health and relatives persuaded him even to break the marriage and while so on 8.9.1995 while her father-in-law was constructing a building she approached him and

demanded Rs.50,000/- or execute a bond he agreed to repay the amount after completion of the construction of the family house and while so he died on 3.3.1996 while the construction was going on. On his death plaint schedule property devolved on the appellants and except second respondent appellants are prepared to execute a document in respect of the property of her father-in-law. But they were not ready to settle the debt due to first respondent and second respondent instituted O.S.86/1997 against appellants seeking a decree for injunction to restrain them from executing any document in respect of the property of George Varghese and he suit was filed on 7.2.1997 and after receipt of the notice on 25.4.1997 appellants executed a document in respect of the property of George Varghese and he was bound to repay the share of Rs.50,000/- received from the father of first respondent and as it was not repaid, first respondent is entitled to the decree sought for. Second respondent remained ex parte.

2. Appellants filed a joint written statement contending that George Varghese did not receive Rs.50,000/- from the father of first respondent as the share due to first respondent as alleged. It was contended that George Varghese was not liable to pay any amount and therefore appellants are also not liable. It was also contended that father of first respondent was not financially sound to pay Sthreedhanam and he had no financial capacity to conduct the marriage and therefore it was agreed to convey 21 ½ cents of the property to respondents jointly and he also demanded money for the expenses of the marriage Rs.50,000/- was withdrawn from the account of wife of second appellant and paid to George Varghese who paid it to the father of first respondent and George Varghese did not receive any amount from the father of first respondent and second respondent was not amenable for an amicable partition of the property of his father and therefore appellants executed a partition deed allotting due share to the second

respondent and he was not satisfied with the share offered and instituted O.S.86/1997 and expenses towards education and personal matters of first respondent till she obtained a job was met by father in law George Varghese and he had no obligation or liability to pay any amount to first respondent and therefore the suit is only to be dismissed.

3. Learned Munsiff on the evidence of Pws.1 to 3 and Dws, 1 to 4 and Exts.B1 to B2 accepted the case of first respondent and found that Rs.50,000/- was paid by father of first respondent to George Varghese father of appellants 2 to 6 as the share due to her for the marriage of first respondent with second respondent and George Varghese was only a trustee and was liable to repay the same and as father-in-law George Varghese did not repay the same, appellants being the legal heirs are bound to pay the same. Therefore a decree for realisation of Rs.50,000/- with interest at 6% per annum from the date of the suit was passed against the assets

left behind by deceased George Varghese with appellants and second respondent. Appellants challenged the decree and judgment before Additional District Court, Mavelikkara in A.S.199/2001. Learned Additional District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

4. Though on the submission of learned counsel appearing for appellants the case was referred to High Court Permanent Lok Adalat, for settlement, no settlement could be arrived at. The appeal was returned back to the court.

5.Learned counsel appearing for appellants was heard.

6. The argument of the learned counsel is that courts below did not properly appreciate the evidence in the background of the case. It was argued that betrothel ceremony was on 16.12.1985 and the marriage was solemnised on 6.1.1986 and case of first respondent was that Rs.50,000/- was

paid by her father on 16.12.1985 at her house to George Varghese, the husband of first appellant and father of other appellants and second respondent and Ext.B1 assignment deeed was executed in the name of respondents on 19.12.1985, three days after the date of betrothel and subsequent to the death of George Varghese second respondent instituted O.S.86/1997 seeking a decree for injunction restraining appellants from alienating the property left behind by the father and there was no allegation in that suit with regard to the payment of sreedhanam raised in the suit and this suit was instituted after the failure of second respondent to get an order of injunction in that suit and this aspect was not properly taken into consideration while appreciating the evidence. Learned counsel also argued that even according to first respondent, sreedhanam paid to the sisters of first respondent was far less than Rs.50,000/- and according to first respondent second respondent was physically and mentally ill at the time of marriage

and was not having any employment and in such circumstance more sreedhanam would not have been paid for the marriage of first respondent and this aspect was not properly taken into consideration. Learned counsel also argued that though first appellate court found that onus is on the first respondent to establish payment of sreedhanam, the burden to call for the records from the Church was wrongly cast on the appellants and for its non-production their case was disbelieved and it should not have been done. Learned counsel also argued that even if those documents are necessary, an opportunity should be granted to call for the documents and establish the fact.

7. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

8. The dispute in the suit is with regard to the payment of Rs.50,000/- as sreedhanam being the share due to first respondent, for her marriage with second respondent. There is no documenary

evidence to prove the payment of sreedhanam. What was argued by learned counsel was that when Ext.B1 assignment deed, being the share of first respondent, was executed by her father in favour of respondents on 19.12.1985 and O.S.86/1997 was instituted subsequent to the death of the father-in-law of first respondent no mention was made about the payment of Rs.50,000/- as sreedhanam and this was not properly taken into consideration by courts below.

9. Learned Munsiff who had occasion to note and appreciate the demeanour of the witnesses accepted the evidence of Pws.2 and 3,apart from the evidence of PW1 first respondent, and believing their evidence found that Rs.50,000/- was paid as canvassed by first respondent. Learned Munsiff also did not rely the evidence of Dws. 1 to 4 for valid reasons given in the judgment. First appellate court reappreciated the evidence and confirmed the findings of learned Munsiff with regard to the credibility and acceptability of the

evidence tendered for first respondent and did not believe the evidence tendered on the side of the appellants. The argument of learned counsel is that evidence is to be reappreciated in the background canvassed by him and the finding of the courts below are to be substituted by the findings of this court. Exercising the powers of this court under section 100 of the Code of Civil Procedure, reappreciation is not warranted, unless the appreciation of evidence by the courts below was so perverse that interference is warranted. On going through the judgments of the courts below, I do not find that appreciation of evidence was perverse warranting reappreciation of evidence by this court. Finding on whether Rs.50,000/- was paid and recovered as found by courts below is a finding of fact. It cannot be interfered. In such circumstance, I find no merit in the appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006